STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

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MIKE COX
ATTORNEY GENERAL

July 30, 2010

Corbin R. Davis
Clerk of the Michigan Supreme Court
Post Office Box 30052
Lansing, MI 48909

Re: ADM File No. 2009-19

Dear Mr. Davis:

I write to comment on the proposed amendment to the Michigan Court Rules in ADM File No. 2009-19 for MCR 6.502 and MCR 7.205.

For the proposed change to MCR 6.502, I take no position on the amendment revision that would create a one-year limitations period for filing a post-conviction relief from judgment motion.

For the proposed change to MCR 7.205, I do not support either of the alternatives that would operate to completely eliminate the one-year period for filing a delayed application for leave to appeal. Instead, I believe shortening the period for filing delayed applications to six months is the wiser solution.

Proposed Amendment to MCR 6.502

Regarding the proposed change to MCR 6.502, I do not take a position. As you are aware, the Department of Attorney General is responsible for responding to petitions for habeas corpus relief under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and this statute includes a one-year statute of limitations period. This limitation, of course, requires petitioners – with exceptions – to seek review when the records of the issue are available. Nevertheless, the responsibility for responding to these motions for relief from judgment under MCR 6.500 *et seq* generally fall to the county prosecutors, and consequently I encourage this Court to carefully examine their responses to this revision.

Proposed Amendment to MCR 7.205

Regarding MCR 7.205, I would note that the Department of Attorney General routinely files briefs in the State appellate courts. In 2009, the Department filed more than 500 briefs in the State appellate courts representing the State of Michigan, its agencies, its officials, and its employees, as well as the People of the State in criminal cases. The Department represents the appellee in the vast majority of these appellate cases. Nevertheless, there are two primary reasons that I do not support the elimination of the one-year period for filing a delayed application for leave to appeal with either replacement identified in Alternatives A and B.

First, the time framework in either alternative does not provide adequate time to obtain the transcripts, review them in time to evaluate the decision to file an appeal, and then prepare the application for leave. Under Alternative A, there would be only 21 days in which to appeal, with a possible extension of another 21 days for excusable neglect, for a total of 42 days. Under Alternative B, there would a total of 56 days, including the 35 days of excusable neglect that would allow the trial court to extend the 21-day time period. Under either alternative, these time periods are inadequate to properly complete these tasks, based on the experience of the Department.

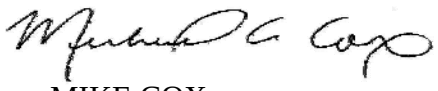
Moreover, these significantly shorter timeframes in Alternative A and Alternative B may become problematic in an era of shrinking budgets and attendant increases in workloads. Having an extended period of time in which to file a delayed application can operate as a safety valve to ensure justice in situations where the need for an appeal may not be readily known due to bureaucratic processes.

Second, the phrase "excusable neglect" does not provide sufficient guidance as to what kinds of justifications would meet this standard for excusing the failure to file within the initial 21-day time period. Moreover, any decision to extend a deadline for filing an application should be made by the Court of Appeals and not a circuit court that has presumably already ruled against the party. *See* Proposal A versus Proposal B.

Rather than create these significantly shorter time periods (42 days or 56 days), I would support the shortening the timeframe to allow cases to move more quickly through the Court of Appeals and to final resolution. As a consequence, I recommend that the rule be revised to reduce the time in which a delayed application may be filed to six months. This period would ensure that there is adequate time to evaluate and pursue an application in the Court of Appeals. Such a revision would be consistent with the recent change to MCR 7.103 (B)(6) for appeals to circuit court, which allows for a delayed application for leave to appeal to be filed six months after entry of the order.

Thank you for the opportunity to comment on these proposed changes.

Very truly yours,



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